relation to the High Court any such Court as by any written law has jurisdiction within the local jurisidiction of the High Court.

The Native Courts are purely a creature of statute, viz. the Native Courts Ordinance (Cap. 43); their jurisdiction is clearly defined by the legislature and the powers of the courts are strictly limited. In short, the Native Courts including the District Native Court are statutory courts established not by federal law but by Sarawak State law. They administer a system of laws entirely different from that of the High Court and the subordinate courts in Sarawak. There is no right of appeal from a decision of the District Native Court to the High Court but under section 8(1)(c) of the Native Courts Ordinance an appeal lay to the Resident's Native Court which shall be constituted by a person for the time being holding or acting in the office of Resident of a division sitting with a Native Officer or Chief and two assessors, being persons whom the Resident has reason to believe are versed in the customary law relevant to the determination of the appeal. Subject to subsections (3) and (4) thereof an appeal by way of case stated on a point of law or native custom lay from the President's Native Court to the Native Court of Appeal presided by a Judge of the High Court nominated by the Yang di-Pertua Negeri.

The phrase "any court subordinate to the High Court" contained in section 44(1) of the Specific Relief Act 1950 is of course different from the expression "subordinate court" as defined in section 3 of the Courts of Judicature Act 1964. In my opinion, a court cannot be said to be subordinate to the High Court unless the High Court exercises supervisory power over it. Moreover, the District Native Court is constituted under the Native Courts Ordinance (Cap. 43) a state law enacted by the legislature of Sarawak and the High Court has no supervisory power over it. Besides, an appeal from a decision of the District Native Court does not lie to the High Court but to the Resident's Native Court.

For the above reasons I am inclined to agree with the submission of the learned the Assistant Attorney-General of Sarawak that the High Court has no jurisdiction to entertain this motion of the applicant. I therefore dismiss the Notice of Motion with costs to the 1st respondent only to be taxed. I make no order for costs in favour of the 2nd respondent.

Notice of motion dismissed.

Solicitors: *Sandhu & Co.; Tang & Antau.*

TENGKU ABDUL MUIZ SHAH & ORS. v. PUBLIC PROSECUTOR.

[O. Cr. J. (Mohamed Dzaiddin J.) November 30, 1982]

[Kuala Lumpur – Criminal Application No. 16 of 1982]

Criminal Law & Procedure – Application to transfer criminal case pending in Johore Baru Magistrate's Court to Magistrate's Court in Kuala Lumpur – Jurisdiction – Whether High Court at Kuala Lumpur had jurisdiction to hear application – The Federal Constitution, arts. 121, 122A, 122B, 122C, 123 & 126 – Courts of Judicature Act 1964, ss. 3, 22(1)(a)(i), 26 & 31 – Criminal Procedure Code, s. 417 – Subordinate Courts Act 1948.

Jurisdiction – "Local jurisdiction" of the respective High Courts at Johore Baru and Kuala Lumpur.

This is an application by the applicants for a transfer of a criminal case pending in the Johore Baru Magistrate's Court to the Magistrate's Court, Kuala Lumpur. The respondent objected to the said application on 2 grounds, viz., that the High Court at Kuala Lumpur has no jurisdiction to hear the application, and even if it has, the High Court is still not empowered under section 417 of the Criminal Procedure Code to make an order for transfer.

Held: (1) since the offence was alleged to have been committed at Johore Baru within the territorial jurisdiction of the Johore Baru Magistrate's Court, and the High Court at Johore Baru has the local jurisdiction for the State of Johore, it follows that the Johore Baru High Court is the court of competent jurisdiction to hear this application;

(2) the present application should therefor be filed before the High Court in Johore Baru and it will be in the power of that court, if it so decides, to transfer the case to Kuala Lumpur Magistrate's Court.

CRIMINAL APPLICATION.

Karpal Singh (*Abbas Rowland* with him) for the applicants.

Mokhtar Abdullah (Deputy Public Prosecutor) for the respondent.

Mohamed Dzaiddin J.: This is an application by the applicants for a transfer of a criminal case pending in the Johore Baru Magistrate's Court to the Magistrate's Court, Kuala Lumpur. Two

preliminary points were raised by the learned DPP on behalf of the respondent. First, he said that the High Court at Kuala Lumpur has no jurisdiction to hear this application; and, secondly, assuming that I have the power to hear this application, I am still not empowered under section 417 of the Criminal Procedure Code to make an order for transfer.

I shall only consider the first objection concerning my jurisdiction. The second objection will only be necessary if I hold that the High Court at Kuala Lumpur is the proper venue to hear this application. Otherwise, it is for the High Court at Johore Baru to decide the second objection.

In considering my jurisdiction to hear this application, I have to address myself on the question of "local jurisdiction" of the respective High Courts. The power of the High Court to transfer cases is provided under section 417 of the Criminal Procedure Code. This section speaks of the "High Court"; and "High Court" is defined in the Courts of Judicature Act 1964 as "the High Court in Malaya and the High Court in Borneo or either of them, as the case may require". Under the Constitution (Article 121(1)), the judicial powers of the Federation is vested in the High Courts of co-ordinate jurisdiction, namely, one in the States of Malaya and the other in the States of Sabah and Sarawak. In the case of the States of Malaya, it shall be known as the High Courts in Malaya and shall have its principal registry in Kuala Lumpur. Except for certain Articles in the Constitution (See Articles 121, 122A, 122B, 122C; 123; 126.), the powers and jurisdiction of the High Court are governed by the Courts of Judicature Act 1964. In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction. Under section 3 of the Act, local jurisdiction means "in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu". Similary, the appellate criminal jurisdiction of the High Court consists of the hearing of appeals from subordinate courts according to any law for the time being in force within the territorial jurisdiction of the High Court – section 26. Lastly, under section 31 of the Act, the High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts. Thus, so far it is clear that the High Court has jurisdiction to try all offences committed within its local jurisdiction and to hear appeals and to exercise powers of revision from subordinate courts.

"Subordinate courts" means "any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court".

The constitution and territorial jurisdiction of both the Sessions and Magistrate's Courts are provided in the Subordinate Courts Act 1948 (Act 92). They have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local jurisdiction assigned to them or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

It is clear from the various sections of the two Acts considered above, the Sessions and Magistrate's Courts can exercise their functions on any cause or matter arising within their local jurisdiction. Likewise, the High Courts exercise their local jurisdiction for their respective States or territory. Since the offence was alleged to have been committed at Johore Baru within the territorial jurisdiction of the Johore Baru Magistrate's Court, and the High Court at Johore Baru has the local jurisdiction for the State of Johore, it follows that the Johore Baru High Court is the court of competent jurisdiction to hear this application. Further, I am of the opinion that this application for the transfer is not any different from that of an appeal or revision in so far as the question of the High Court's local jurisdictional powers is concerned. Hence, by virtue of section 26 of the Act, the appellate criminal jurisdiction of the High Court at Johore Baru consists of the hearing of appeals from the subordinate courts in Johore Baru which is within the territorial jurisdiction of that High Court.

In my judgment, the present application should be filed before the High Court in Johore Baru; and it will be in the power of that court, if it so decides, to transfer the case to Kuala Lumpur

Magistrate's Court. I realise the predicament in which the counsel and the applicants are facing. Be that as it may, I have to dismiss this application on this ground alone. I am leaving it open for the applicants to apply to Johore Baru High Court for further orders.

Order accordingly.

Solicitors: *Roslani A.J. Ariffin & Abbas.*

CH'NG LIAN ENG v. PUBLIC PROSECUTOR.

[A.Cr. J. (Edgar Joseph Jr.) December 3, 8 & 9, 1982]

[Penang – Criminal Appeal Nos. 73 of 1981 & 74 of 1981]

Criminal Law & Procedure – Rape of girl aged 13 years and 11 months – Appeal against conviction and sentence – Conviction affirmed – Sentence reduced from 3 years to 8 months.

Penal Code, s. 376 – Rape of girl aged 13 years 11 months – Appeal against conviction and sentence.

The appellant was convicted of rape of a girl aged 13 years and 11 months in contravention of section 376 of the Penal Code and sentenced to 3 years' imprisonment. He appealed against the said conviction and sentence. The Public Prosecutor, on the other hand, appealed on the ground of inadequacy of sentence.

The girl said that there were two acts of rape – both at the Rest House, Penang, on two different nights in July 1979. As regards the first of these acts, she was frightened into submission and was, therefore, not a consenting party, whereas, as to the second, she was a consenting party, having been seduced by the appellant with a promise that he would divorce his wife and marry her. The appellant claimed that the case against him had been framed and that no sexual intercourse took place at any time. The learned President found in favour of the girl's version and rejected that of the appellant.

Held: (1) contrary to the finding of the learned President, there was corroboration of the girl's evidence. This was in the form of love letters which passed between the appellant and the girl. There was also a manifest lie on the part of the appellant that his relationship with the girl was purely platonic. The appeal against conviction was therefore dismissed;

(2) justice would be best served if the sentence of 3 years were reduced to 8 months. The Public Prosecutor's appeal against sentence was dismissed.

Cases referred to:

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.
(2) *Teng Kum Seng* v. *Public Prosecutor* [1960] M.L.J. 225.
(3) *R.* v. *Renphrey* (1964) Cr. L.R. 671.
(4) *R.* v. *Sapherson* (1963) Cr. L.R. 66.

CRIMINAL APPEALS.

R. Rajasingam for the appellant.

Mohamed Nordin bin Hj. Sulaiman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This appellant was convicted of rape of a girl aged 13 years and 11 months in contravention of section 376 of the *Penal Code* and sentenced to three years' imprisonment. Against this conviction and sentence he has appealed. There is also an appeal by the Public Prosecutor alleging inadequacy of sentence.

It is unnecessary to set out the facts as these appear sufficiently from the judgment of the learned President.

Before me, the convictions have been attacked on a number of grounds, all of them raising questions of fact. They may be consolidated under one head, namely, that the circumstances of the case were such that it was wholly unsafe to convict on the uncorroborated testimony of the girl who, it was said, was not a witness of truth.

Now the issue in the court below was simple. The girl said there were two acts of rape – both at the Rest House, Penang, on two different nights in July, 1979. As regards the first of these acts, she was frightened into submission and was, therefore, not a consenting party, whereas, as to the second, she was a consenting party, having been seduced by the Appellant, with a promise that he would divorce his wife and marry her.

The Appellant, on the other hand, said that the case against him had been framed and that no sexual intercourse took place at any time. So the sole question which the learned President had to determine at the end of the defence case was whether or not the prosecution had proved beyond all reasonable doubt that sexual intercourse took place between the Appellant and the girl at a time when she was under 14 (*Haw Tua Tau* v. *Public Prosecutor*)[1].

Since the charge merely alleged a single act of rape in July without specifying which of the two acts was charged, it was vague and confusing. However, as the Appellant was represented and was clearly aware of what was charged against him and as his defence was one of a bare denial,